CHUA HONG AIK TRADING CO. & ANOR. v. HO NAI YIN

[D.C.A. (Rajah J.) May 13, 1983]
[Singapore – District Court Appeal No. 2 of 1983]

Practice & Procedure – Costs – When costs allowed under Subordinate Courts Rule 1970, 0.48 r.28(1) to (4).

This was an appeal from the judgment of the District Judge on the question of whether on the facts of the case he should have awarded costs to the plaintiff/respondent under Order 48 rule 28(2) or under Order 48 rule 28(3) of the Subordinate Courts Rules 1970 which was what he did. The learned District Judge said, "This is a case where on the day of trial judgment was given before the trial began. It was a case falling within the ambit of Order 48 rule 28(3) and not under Order 48 rule 28(2). I ruled the plaintiff was entitled to three-quarters of the costs of advocacy".

Held, dismissing the appeal: (1) the combined effect of Order 48 rule 28(1), (2), (3) and (4) is:

(i) if judgment is entered or is given in the action before the action has been fixed for trial, then no costs for advocacy shall be allowed;

(ii) if judgment is given after the action has been fixed for trial, but before the day of the trial then half the costs for advocacy may be allowed;

(iii) if judgment is given on the day of the trial but before the trial begins, then three-quarters of the costs for advocacy may be allowed;

(iv) if judgment is given at any time after the trial has begun full costs for advocacy may be allowed;

(2) the plaintiff/respondent's case came within the ambit of Order 48 rule 28(3).

DISTRICT COURT APPEAL.

Jayabalan for the appellants.
Andrew Ee for the respondent.

Cur. Adv. Vult.

Rajah J.: This is an appeal from the judgment of a District Judge on the question of whether on the facts of the case he should have awarded costs to the Plaintiff/Respondent under Order 48 rule 28(2) or under Order 48 rule 28(3) of the Subordinate Courts Rules 1970 which was what he did.

The facts as agreed at the hearing of the appeal was that at 5.00 p.m. on the afternoon of the day before the day fixed for the trial the defendants' solicitors had agreed with the plaintiff's solicitors to submit to the claim of the plaintiff's but were unable to agree on the question of costs to be paid to the plaintiff. The plaintiff's solicitors contended that the costs should be three-quarters of the costs for advocacy (Order 48 rule 28(3)) for the reasons (1) that, as the question of the quantum of the costs had not been agreed upon, the action had not really been settled and (2) that judgment was given on the day of the trial; the defendants' solicitors maintained that only half the costs for advocacy was payable to the plaintiff as the action had been settled on the day previous to the day of the trial. (Order 48 rule 28(2)).

In his judgment the learned District Judge said "This is a case where on the day of the trial judgment was given before the trial began. It was a case falling within the ambit of Order 48 rule 28(3) and not under Order 48 rule 28(2). I ruled the plaintiff was entitled to three-quarters of the costs of advocacy." I agree.

In my view the combined effect of Order 48 rule 28(1), (2), (3) and (4) is as follows:–

(1) If judgment is entered or is given in the action before the action has been fixed for trial, then no costs for advocacy shall be allowed.

(2) If judgment is given after the action has been fixed for trial, but before the day of the trial then half the costs for advocacy may be allowed.

(3) If judgment is given on the day of the trial but before the trial begins, then three-quarters of the costs for advocacy may be allowed.

(4) If judgment is given at any time after the trial has begun full costs for advocacy may be allowed.

The plaintiff/respondent's case, in my view, comes within the ambit of Order 48 rule 28(3). The appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *Cooma Lau & Loh; Andrew Ee & Co.*